

REMARKS

Applicant has studied the Office Action dated October 7, 2004. No amendments have been made to the claims. Applicant respectfully points out that a Request for Continued Examination (RCE) had been submitted in this case on August 10, 2004. This is the first Office Action after submission of this RCE. Prior to submitting the RCE, the Applicant submitted a Response After Final Action on June 29, 2004, which contained an amendment and affidavit under 37 C.F.R. 1.131. As provided under 37 C.F.R. 1.114, M.P.E.P §706.07(h), and M.P.E.P §706.07(h)(V), the Response After Final Action filed on June 29, 2004 should be entered in this case prior to further examination after the RCE. The Applicant respectfully requests reconsideration and reexamination of the subject patent application.

The Applicant is attaching a copy of the previously filed affidavit under 37 C.F.R. 1.131 hereto for the convenience of the Examiner. The claims recited in this response also reflect the amendments made in the Response After Final Action. The Applicant further reasserts the remarks made in the Response After Final Action submitted on June 29, 2004.

The Applicant respectfully points out the Office Action dated October 7, 2004 fails to mention the affidavit under 37 C.F.R. 1.131 which was filed in this case. This affidavit by the Applicant declares that the invention described in the subject patent application was reduced to practice prior to the June 14, 2001 date of the McGuire et al. reference (U.S. Publication No. 2003/0023489). The Office Action contains no indication that the affidavit has been considered or if it was unacceptable. Although the Applicant submitted this affidavit which effectively removes the McGuire reference from consideration, the current Office Action rejects all pending claims based upon the McGuire reference.

SOM920010001US1

Page 12 of 14

S/N 09/909,564

The current Office Action further declares that the Applicant's arguments have been considered moot in view of the new grounds of rejection. However, the Applicant respectfully asserts that the rejections in this Office Action are based upon the exact same cited prior art with explanations that are substantially identical to those of the Final Office Action dated April 29, 2004. The Applicant respectfully asserts that the Applicant's remarks should be addressed when the Examiner is continuing his previous rejection based upon the exact same cited prior art.

The Applicant's representative wish to thank Examiner Backer for discussing this Office Action in a telephone call on January 4, 2005. In that telephone call, the Applicant's representative pointed out that the affidavit under 37 C.F.R. 1.131 did not appear to be considered in the current Office Action. Examiner Backer indicated that he would identify the best way to handle this. In that telephone call, the Applicant's representative indicated that the shortened statutory period for this response would expire on Friday, January 7, 2005, and the Applicant's representative requested Examiner Backer to reply with his decision before that date. The Applicant's representative has several left voice messages for the Examiner requesting a response and, as of the afternoon of January 7, 2005, Examiner Backer has not responded. In order to avoid the costs of needless extension fees, and to further prosecution, the Applicant has filed this response.

In light of the Affidavit under 37 C.F.R. 1.131 that has been filed in this case, and which should be entered prior to examination under the previously filed RCE, the Applicant respectfully requests that a new, non-final office action be entered in this case to reflect the Affidavit under 37 C.F.R. 1.131.

Conclusions

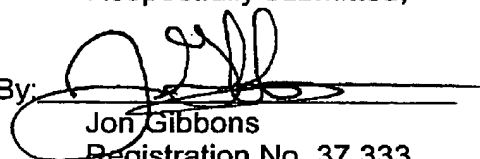
The remaining cited references have been reviewed and are not believed to effect the patentability of the claims as amended.

PLEASE CALL the undersigned if this would expedite the prosecution of this application.

Date: January 7, 2004

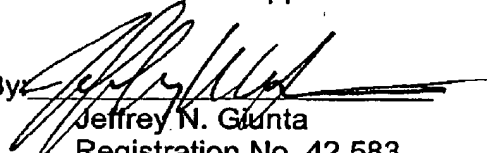
Respectfully submitted,

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